

During the 2015 trial – the government claimed during a sidebar discussion that Jay McKee was only a victim of the alleged GSF scheme. The underlying issue with the alleged criminal scheme was that McKee – like other – were not aware of the use of funds as Constantine distributed them.

The government's confirmation of this took place as follows –

Sidebar discussion –

tr.1846

16 THE COURT: What's the objection?
17 MS. KOMATIREDDY: Your Honor, we object based on
18 relevance. We also objected because Mr. McKee is here as
19 a witness with respect to the Global Settlement Fund.
20 He's not alleged to be a victim of the Eufora fraud in
21 this case. His investment was in a different time period.

Jay McKee confirmed to the government that he also spoke with his wife and former teammate and friend – Michael Peca – after the presentation by Constantine and Kenner at dinner in Buffalo, NY on May 8, 2009.

McKee discussed GSF with Peca – also spoke to his wife – before someone in his family returned the authorization email for the use of funds...

5 Q. Did you ultimately decide to participate?
6 A. I did.
7 Q. Why?
8 A. I believed in what they said. I felt we would have
9 had a chance to get some money back. I obviously wasn't
10 happy with nothing being achieved in the property that I
11 invested half a million dollars into.
12 So after talking to them my wife and I went home
13 and talked about it, I talked to some other former
14 teammates, and thought that this would be the best course
15 of action to recoup some money.

After the alleged follow-up discussions – McKee authorized the wire transfer for the GSF contribution. Immediately afterwards McKee (*or someone from his home – perhaps unknown to him as he testified*) returned the authorization form, which explained the use of funds -- as “**ACKNOWLEDGED and APPROVED...**” (*below*)

These specific terms of use for Constantine were as follows –

McKee GSF Report

From: Jay McKee <NidJay74@aol.com>
Date: Mon, 18 May 2009 15:20:22 -0400
To: PHIL KENNER <kenner33@gmail.com>
Subject: Re: Global Settlement acknowledgement

Acknowledged and approved..

-----Original Message-----

From: PHIL KENNER <kenner33@gmail.com>
To: Jay McKee <NidJay74@aol.com>
Sent: Mon, 18 May 2009 1:15 am
Subject: Global Settlement acknowledgement

Jay & Nicole:

Per our conversation, please acknowledge your approval and authorization for me to have wire transferred \$250,000 to Attorney Ron Richard's Trust Account for your proportionate contribution to the Global Settlement Fund. In addition to the fund paying for various legal fees, PR Agency fees, as well as other protective advances and settlement costs, you will be receiving transfer of membership agreements from Tommy for your acquisition of additional interest in Eufora, LLC, as well as your new LLC and operating agreements reflecting your ownership interest in the Avalon Airpark Real Estate Project, the Falcon 10 aircraft, and the two Palms Place condominium units. You may not recall Tommy or I mentioning the Palms units in our conversation. In any case, because Moreau and Tommy settled that case as part of the Global Settlement, he has graciously elected to include you as a beneficiary in the significant equity that exists in those two units as part of this transaction. As we discussed, rather than throwing money away only on legal fees, this strategy which effectively acquires significant assets, while providing a legal remedy, is by far our best solution.

Tommy has requested from all of us and will provide to us, written documentation of every element of this transaction. Please respond, ACKNOWLEDGED AND APPROVED, to this email accordingly ASAP.

Thanks. Phil

McKee actually told the trial court that he really did not even remember the authorization despite it clearly was sent to his email address – received -- and responded to by someone with access to his email account. At a minimum – wouldn't that make someone related to McKee's email account responsible for the authorization, as detailed?

20 I'll read to you the lower portion of this
21 exhibit. I don't believe it was read before. Let's see
22 if I can bring it all in.
23 It says Tommy has requested from all of us and
24 will provide to us, written documentation of every element
25 of this transaction. Please respond. Acknowledged and

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1 approved, to this e-mail accordingly ASAP.
2 Thanks, Phil.
3 Now, obviously I'm not going to ask you if you
4 remember that because you don't have a recollection of
5 this; is that correct?
6 **A Correct.**
7 **Q But you would agree with me this was received by your**
8 **e-mail account at your home?**
9 **A Yes.**
10 **Q You have no recollection of speaking to your wife**
11 **about the contents --**
12 **A I did not.**
13 **Q -- Of this.**
14 When for the first time did you actually see
15 this document?
16 **A Well, as I said, I don't recollect if it was myself**
17 **or my wife that opened it, so if it was me it would have**
18 **been May 18th. The next time I saw it was yesterday.**

No email to Kenner or Constantine ever followed from McKee or his wife – *or any other contributor to the GSF overall actions* -- after each and every person returned the **AUTHORIZATION** – *not one*.

At the 2015 trial – McKee confirmed – based on his memory at the time that he though the entire GSF was to ONLY sent funds to Ronald Richards to sue Jowdy – clearly contradicting his authorization email (*above*)...

Only Ronald Richards fees –

25 **Q. Did either Mr. Kenner or Mr. Constantine explain or**

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1 tell you that any money from the Global Settlement Fund
2 would be used to pay any lawyers other than Ron Richards?
3 A. No.

Then – at least as planned by the government and expecting McKee’s lack of memory about the use of funds – the government led McKee thru a series of questions intended to **CONFIRM** the **CONCEALMENT** of the actual use of funds – per the government's prosecutorial theories --

McKee claims no knowledge of the GSF use of funds as specifically outlined in the AUTHORIZATION email–

21 Q. In addition to the fund being for -- sorry. Let's go
22 on the rest of that. You will be receiving transfer of
23 membership agreements from Tommy for your acquisition of
24 additional interest in Eufora, LLC, as well as your new
25 LLC and operating agreements reflecting your ownership

McKee - Direct/Komatireddy

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1 interest in the Avalon Airpark real estate project, the
2 Falcon 10 aircraft and the 2 Palms Place condominium
3 units.

4 First of all, this Air Park, the Falcon and the
5 Palms condominium units, did Mr. Kenner or Mr. Constantine
6 mention those things before you gave them money?

7 A. I don't recall those, no. I don't recall those.

8 Q. In your conversation with them in the restaurant, did
9 they mention those things?

10 A. Not that I recall.

11 Q. In this e-mail where it says you're going to get
12 transfer of membership agreement for an interest in
13 Eufora, did you intend for any of your money in the Global
14 Settlement Fund to be used for Eufora?

15 A. No.

16 Q. Would you have given any money to the Global
17 Settlement Fund if you had been told that any portion of
18 it would be used for Eufora?

19 A. No.

20 Q. Did you intend any of your money in the Global
21 Settlement Fund Tommy Constantine used for a Falcon 10
22 aircraft?

Then – for further emphasis by the government once McKee failed to recall any of the authorized uses or his text conversation with Kenner (*below*) – the government asked him the same questions *again* – *this time* – receiving a more firm **NO** response for each of the approved uses.

McKee denied 100% of what was discussed at the GSF dinner meeting on May 8, 2009...

4	Q. Let me ask it again. Did you intend for any of your
5	money in the Global Settlement Fund to go to a Falcon 10
6	aircraft?
7	A. No.
8	Q. Would you have given money to the Global Settlement
9	Fund if you had been told that any of it would go to a
10	Falcon 10 aircraft?
11	A. No.
12	Q. Would you have -- did you intend any of your money in
13	the Global Settlement Fund to go to two Palms Place
14	condominium units?
15	A. No.
16	Q. Would you have given any money to the Global
17	Settlement Fund if you knew that any portion of it would
18	go to pay for two Palms Place condominium units?
19	A. No, I would not.
20	Q. This e-mail says that you would be getting an
21	interest in these things. Why would you be getting
22	interest in these things?
23	A. <u>I don't have an answer.</u>
24	Q. Did they explain either Kenner or Constantine explain
25	to you?
McKee - Direct/Komatireddy	
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1	A. <u>Not that I recall, no.</u>

If McKee were 100% truthful about these critical issues – which played a heavy role in the conspiracy conviction of concealment by Kenner and Constantine – it would be appropriate -- ***if not for the following fully detailed and 100% contradicting conversation between Kenner and McKee immediately after the May 8, 2009 dinner (below) –***

Kenner responses in RED --

703 2	+17168034 903 Jay McKee*	5/9/2009 3:46:20 AM(UTC+0)	Rea d	Thx 4 making the trip bud.. Took in alot from the talk tnite.. Drive safe, be in touch..
825 5	+17168034 903	5/9/2009 3:55:39 AM(UTC+0)	Sent	Good stuff

McKee GSF Report

	Jay McKee*				
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7039	+17168034903 Jay McKee*	5/9/2009 12:36:25 PM(UTC+0)	Read	Can u do me a favor.. Can u email me, so I can look at it on paper, <u>everything</u> my 250 turns into.. Nicole was speaking with Tommy when u explained to me all the areas where we are benefiting..	
8265	+17168034903 Jay McKee*	5/9/2009 12:37:21 PM(UTC+0)	Sent	I will have tommy do it so it's consistent with the discussion	

7040	+17168034903 Jay McKee*	5/9/2009 12:37:42 PM(UTC+0)	Read	Perfect, tks	
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7043	+17168034903 Jay McKee*	5/9/2009 2:12:22 PM(UTC+0)	Read	Hey, also, could u email me what the 3 black sheep are getting in the end result, as well as Tommy bullet points they had 2 agree too.. Tks	
8269	+17168034903 Jay McKee*	5/9/2009 2:32:11 PM(UTC+0)	Sent	Tommy said you will get 1/10th of everything that is acquired of theirs which includes 20% (2% for you) of the <u>airpark building</u>, 1/10th of their 3.64% of their Eufora shares (.364% for you which puts you just over 1% in <u>Eufora</u>) and then a small piece of the <u>jet</u> which TC is still crunching numbers on but it will probably be 1% of it.	
8270	+17168034903 Jay McKee*	5/9/2009 2:35:46 PM(UTC+0)	Sent	TC will send you the bullets they agreed to but has to wait till it's actually signed. Should be a day or two. They have only agreed by email so far. He will also send you the <u>media summary</u> but he wants you to convince the owner of Chef's to send him the tomato sauce Fed Ex.	

704	+1716803490	5/9/2009 2:43:44	Rea	Haha.. Consider it done.. I'll have Lou	
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McKee GSF Report

4	3 Jay McKee*	PM(UTC+0)	d	put some bottles together with the extra meat for the real flavor..	
827 1	+1716803490 3 Jay McKee*	5/9/2009 2:45:55 PM(UTC+0)	Sent	Thx	

704 5	+1716803490 3 Jay McKee*	5/9/2009 3:36:47 PM(UTC+0)	Read	Did TC say the jet was worth 250m last night?	
827 3	+1716803490 3 Jay McKee*	5/9/2009 3:44:10 PM(UTC+0)	Sent	The jet is worth 1.5m. He invested 250k to repair it	

704 6	+1716803490 3 Jay McKee*	5/9/2009 3:45:53 PM(UTC+0)	Read	Aha.. Thats where the 250 number came from..	
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704 8	+1716803490 3 Jay McKee*	5/9/2009 3:53:08 PM(UTC+0)	Read	In the deal, the 3 guys get their money back from their involvement with TC, but nothing back from their Mexico deals, correct..	
827 6	+1716803490 3 Jay McKee*	5/9/2009 3:54:14 PM(UTC+0)	Sent	Correct!	

705 3	+1716803490 3 Jay McKee*	5/9/2009 5:43:22 PM(UTC+0)	Read	If we get control of Jowdys Cabo equity and move to sell Cabo - we get our 500 back from del mar, and what percent of Cabo do we end up with?	
828 2	+1716803490 3 Jay McKee*	5/9/2009 5:48:03 PM(UTC+0)	Sent	Its impossible to say until we know everyone who's involved in getting Jowdy's 40%. For example, the new bank/investor may want half of it to do the deal. But...whatever it is, you will get 1/10 of it.	

706 0	+1716803490 3	5/9/2009 10:01:18 PM(UTC+0)	Read	So is it correct to say we'd get our 500 back from del mar, as well as a	
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McKee GSF Report

	Jay McKee*		prob minumium 2% of Cabo? Sorry to keep asking - just trying to get it right..	
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If McKee did not lie on purpose to support the government's claims of conspiracy by concealment – then the inaccurate testimony by McKee certainly and wrongfully contributed to the ongoing collective amnesia by the GSF contributors to the government's favor while seeking a conviction of Kenner and Constantine – for alleged crimes that McKee – in particular – exhibited ***faulty memory, confusion and clearly made a mistake.***

What is the government or McKee doing to make sure the court is alerted to the PLAIN ERROR? To date – they are doing nothing to make sure innocent individuals are not convicted based on faulty memory, confusions and mistakes...

According to the government – this was the only relevant testimony to support the government conviction allegations thru McKee – and it is clearly FALSE...